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RIGHT OF THE NATION

TO DEAL WITH THE

Ecclesiastical Endowments

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RX

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Birmingham.

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The following paper was originally read at a Midland Counties Conference of the supporters of the Society for the Liberation of Religion from State-Patronage and Control, held at Birmingham, February 9th, 1875. The writer alone is responsible for the sentiments which it contains; and it is published—in compliance with the request of the Conference—not as an authoritative exposition of the Society's views, but as a contribution towards the discussion of a confessedly difficult subject. In the present edition, one or two subordinate passages have been re-written.

June, 1875.

THE RIGHT OF THE NATION

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TO DEAL WITH THE

ECCLESIASTICAL ENDOWMENTS, 1875

&c.

Before reading the Paper which I have prepared at the request of the Committee in charge of this Conference, it is right that I should, distinctly and emphatically, declare that I am alone responsible for the opinions expressed. As respectfully and clearly as possible I shall state my own personal convictions, in the belief that whatsoever may be erroneous in them will be best corrected by open discussion, and that the speediest and the surest method of securing ultimate cooperation is to encourage the frankest expression of individual thought.

A discussion on the right of the nation to deal with endowments now devoted to ecclesiastical purposes, and administered by one section of the community, can neither be justly regarded as dictated by ungenerous and sordid motives, or scornfully dismissed as an appeal to low and ignoble passions. Large and far-reaching educational, moral, and religious interests are inextricably involved. If, as the Liberation Society contends, the establishment of a "Church of England" by the State is a grave spiritual misfortune, disestablishment without disendowment would intensify the evil a thousandfold. It would remove the check upon ecclesiastical pretensions furnished by the lay conscience and

by legal forms of procedure; while it would bestow upon an organisation which would have the strongest pecuniary, motives for narrowing its interests, an imperial range of influence, apart from the control of imperial authority.

In a speech delivered in the House of Commons (May 16th, 1873), Mr. Gladstone is reported to have said, "I once made a computation of what sort of allowance of property should be made to the Church of England if we were to disestablish her upon the same rules of equity and liberality with respect to property which we adopted in the case of the Irish Church; and I made out that, between life incomes, private endowments, and the value of fabrics and advowsons, something like £,90,000,000 sterling would have to be given, in this process of disestablishment, to the ministers, members, and patrons of the Church of England. That is a very staggering kind of arrangement to make in supplying the young lady with a fortune, and turning her out in life to begin the world. And undoubtedly the spectacle of a voluntary society in the position of the Church of England, altogether independent of the State, and with money available for her purposes that can be roughly described, or even possibly estimated, by figures like these, does present to the mind rather puzzling problems, so that prudent men, moderate men, and, on my own behalf, Sir, I will say liberal men, may venture to doubt whether they are called upon by any imperative sense of duty to join in such a crusade, even though led by my hon, friend filling the part of Peter the Hermit."

I entirely accept Mr. Gladstone's statement, and do not believe that "liberal men" are called upon to join in any such crusade. If the ecclesiastical system known as the "Church of England" should have any proportion of the large possessions now enjoyed through its connection with the State secured to it as a private sect, it would within its own bound-

aries exercise an ambitious tyranny; and in relation to the country, it would become the centre of a political power in eternal conflict with free institutions.

Neither is it evidence of mercenary greed to insist upon the importance of the disendowment of the Church for the relief of national burdens. The awful shadows of ignorance and pauperism fall darkly upon our country. Boast of our civilisation as we may, life to thousands of our fellow-countrymen and countrywomen is a heavy and weary burden; and many of their miseries could be uplifted by a fair application of resources now employed for ecclesiastical purposes. In town and country, those who labour for social improvement are hampered by the fear of resistless opposition should the rates be raised. When the standard of education is kept miserably low, lest it should become too costly; when dens, which generate that physical pestilence which, in its turn, brings forth moral death, cannot be thoroughly cleansed lest another penny in the pound should be added to our taxes; when numberless labourers on the soil have no chance of becoming intelligent men, through the sordidness of their surroundings—we are bound to ask, in the name of justice and humanity, whether those who love God cannot and ought not to pay the cost of worshipping Him; and whether the resources of England cannot be more thoroughly applied toward lightening these national burdens, which so miserably interfere with the general enjoyment, not only of the higher graces, but of the simplest necessities of civilised existence?

The Bishop of Manchester asks, "What would they say if some paid lecturer were to begin to say to the Duke of Devonshire that he should be allowed to retain his property as long as he lived, but when he was gone it should be parcelled out among themselves? Great questions like this ought not to be agitated by holding before the eyes of the

ignorant agricultural labourer—though he believed that the agricultural labourer was not nearly so ignorant as was supposed—such baits as should never be held up before any men, thus tempting them with the hope of possessing the parson's tithes and lands, while it was not possible to tell what might be the difficulties in the way of the enjoyment of them."* Bishop Fraser assumes the whole question. We are not tempting men with the hope of possessing "the parson's tithes and lands;" we are showing them the validity of their own' title-deeds to their own possessions. We are offering no "bait"—so offensive a phrase as "holding up a bait" does not describe our purpose. We, at least, believe that we are pleading for the higher civilisation of England.

In examining the right of the nation to deal with ecclesiastical endowments, I propose to state in a series of propositions, as clearly and distinctly as possible, the positions for which I contend; ranging beneath them such antagonistic theories as it may prove essential to notice. I shall not argue the question as a matter of "generous" treatment, but as one of right. It will be time to consider what is generous when we understand what is just. If we attempt to decide upon the generous method of treating endowments before we fairly understand the extent of the nation's claims, we shall not only wrong the manliness of our opponents, who surely desire, as we desire, that whatever is right shall be done, and are not in any way to be regarded as suppliants craving for mercy; but we shall fail to gain for ourselves any knowledge either of what is generous or what is just. Neither shall I discuss possible compromises which it may be or may not be necessary to make, in order to carry a Disendowment Bill through the House of Commons. If we begin with propounding schemes of compromise, we shall end with losing

^{*} Speech at Dewsbury, December 3rd, 1874.

everything for the sake of which we fancied compromise desirable. Great reformations have never been achieved by men too timid to state the principles for which they were willing to live and die. The mediators, without the prophets, would have made poor work of the world's history.

Multiplicity of detail will not be required by the argument I submit. We must protect ourselves against the danger of permitting the point of the whole controversy to be lost in an intricate confusion of minute and unessential issues. The theories in contention regarding Church property stand opposed to each other on remarkably clear and distinct lines. They are not metaphysical subtleties, except in the sense in which the question, "What is a pound?" raises a metaphysical subtlety in currency. They are not antiquarian problems, except in the sense in which the origin of the present rights of the Crown constitutes a chapter of antiquarian research. Although unable to say, "What is a pound?" our knowledge as to the rightful owner of a definite sum of money may be precise; and although the exact method by which the Crown obtained its privileges may not be very clear, we may not have the slightest doubt as to whom our allegiance as citizens is due.

My first proposition is:—That what is popularly, and for convenience, termed the "Church of England" is, in reality, the State exercising ecclesiastical functions; and that, therefore, whenever the State determines no longer to exercise those ecclesiastical functions, no institution which may be organised by individual Episcopalians, and called the Church of England, will have any right to claim the revenues which have been devoted to religious purposes, under the direction of the State, as its own private property.

The Church of England is not, I contend, a distinct institution which has entered into partnership with the State, and

which, on the dissolution of that partnership, is entitled to pecuniary compensation; but is an agency of the State employed for the conduct of certain services. When the State chooses to surrender the charge of the religion of the country, no corporate body, with any title to be called the Church of England, will exist, either in law or fact, until those who choose meet, and create an organisation at their free and independent pleasure. Bishop Fraser's statement, that while "the Church, as an aggregate or a corporation, has no property whatever, all the property was allocated to the several benefices, each of which forms a corporation sole," does not touch this position. The allocation of lands and titles to benefices for ecclesiastical purposes does not constitute them the private property of those benefices. They have always been employed under regulations determined by the nation, acting through its constituted authorities, and have never been administered by any body or corporation, whether sole or aggregate, capable of acting independently of the State, and disregarding the definite conditions it has "The clergy," said Lord Brougham, "are officers of the State, and, like other officers of the State, may be got rid of in proportion as they are no further wanted." * The State can as justly decide that the money now administered to secure the services of a body of clergy should be applied to another purpose as the Admiralty can pay off a ship. There is no corporate body with proprietary rights of its own called the "British Army." Neither is there, in a legal and corporate sense, a Church of England distinct from the State. If a law were enacted abolishing a standing army, the individual men and officers would be entitled to compensation; but there would be no "British Army," with rights as a corporate institution, to receive any part of the balance which

^{* &}quot;Mirror of Parliament," 1825, p. 367.

might be left after such compensation had been paid from the sum now devoted to its maintenance. The enactment of laws liberating religion from State-control would have precisely analogous results. The fact that, instead of certain votes being annually taken, burdens have been imposed as charges upon land; accumulations secured through the operation of common law, and properties allocated to special benefices, does not invalidate the conclusion that the determination of the State to abandon the charge of religious services would leave no corporate institution entitled to apply to its own uses endowments at present ecclesiastically employed. Whatsoever remained after individual compensation, would, therefore, be the property of the nation itself.

As a matter of law, this position appears to be absolutely established by the Irish Church Act. By clause 13, every ecclesiastical corporation in Ireland, whether sole or aggregate, was dissolved, and by clause 21, ecclesiastical courts and ecclesiastical law were abolished. As a direct consequence of these clauses, no Irish Church existed, as a corporate institution, at the moment when the Act came into existence. The State having ceased to exercise religious functions, no Church remained as an incorporated body until a purely voluntary association was organised. A special clause (22) was therefore inserted in the Act, providing that "if at any time it be shown to the satisfaction of Her Majesty that the bishops, clergy, and laity of the said Church in Ireland, or the persons who for the time being may succeed in the exercise and discharge of the episcopal functions of such bishops, and the clergy and laity in communion with such persons have appointed any persons or body to represent the said Church and to hold property for any of the uses or purposes thereof, it shall be lawful for Her Majesty, by charter, to incorporate such body, with power, notwithstanding the

Statutes of Mortmain, to hold lands to such extent as is in this Act provided, but no further or otherwise." This new Church body inherited by right no property. Property was bestowed on it by arrangements, which were, in fact, provisions for making special gifts. If every ecclesiastical corporation in England were dissolved, as in the case of the Irish Church, a number of men might voluntarily meet together and form a Church, and accept episcopal forms, and s gn the Thirty-nine Articles, and say that they belonged to the "Church of England;" but no ecclesiastical endowments whatever would belong to them, except by special gifts, which t might be wise or unwise to make.

For myself, I believe that every objection to a State-Church as now existing would apply to any legislation which should practically re-create or re-endow a "Church," nd recognise a certain number of men who happen to believe in Episcopacy, as forming the "Church of England," with direct or indirect claims upon ecclesiastical endowments. We are frequenty told that "the Church is co-extensive with the nation." If so, no voluntary organisation of Episcopalians which might succeed disestablishment can have a right of inheritance to property distinctly held in the hands of the political representatives of the whole community.

Historically, it is impossible to separate Church and State into two distinct bodies. What is termed Church property originated when the relationships between the various constituted authorities in Church and State were by no means sharply defined, but were, indeed, unceasingly contending against each other for supremacy. Whether or not the Anglo-Saxon kings gave portions of their own estates or public lands to the "Church" is a mere antiquarian question, inasmuch as the fact remains patent that since England, as an organised

community, has been in any relation to Christianity, the civil Government has, on the one hand, struggled to keep its hold upon the ecclesiastical arrangements of the nation, and on the other hand has employed State-machinery to assist in the development of ecclesiastical resources. The increase of the property administered by the Church, through the action of the common law of the land, has been proved by Mr. Miall by facts which have never yet been answered. To quote one or two salient instances only: Tithes recoverable by law, under pains and penalties, have been paid upon articles such as turnips, potatoes, hops, hemp, flax, and several garden fruits-vegetables which were either unknown in England, or if known, not employed as sources of gain, until long after the establishment of the tithe system.* Benevolent individuals had assuredly no power of prophecy to enable them to make tithable, articles with which they were utterly unacquainted. The case of personal tithes is equally strong. The wages of carpenters, smiths, weavers, masons, innkeepers; the fish taken in the sea; the gains from working a millwere all tithable; but could not have been subjected to the tax by the authority of a pious founder. With respect to the land, Mr. Miall proves by statistics—comparing the acreage of land under tillage or pasture in Great Britain in 1871 with the acreage similarly employed in the time of Johnthat eight-ninths of the tithe property since commuted into rent-charge, i.e., 21,500,000 acres out of 24,000,000, on the annual produce of which rent-charges are due to the Church, had nothing to do with individual bequests, but became tithable by the direct action of public law.

While the State secured provision for ecclesiastical offices,

^{* &}quot;Title Deeds of the Church of England to her Parochial Endowments." By Edward Miall, p. 53, et seq.

[†] Speech in the House of Commons, July 2nd, 1872.

it exercised over their performance an unceasing and solicitous control. No time can be pointed out in which a corporate body, called the Church of England, entered into a compact with a body called the Government of England—as one man might enter into a business partnership with another reserving power to resume his own rights. I entirely agree with Dr. Freeman when he characterises the statement that "there are two distinct bodies, called Church and State. which are capable of bargaining with one another 'as a delusion':" and maintains that "it will be well for the words 'relations of Church and State,' to substitute some such words as 'legislation on ecclesiastical matters.' " What we commonly call the State Church is but the outcome of legislation on ecclesiastical matters, and can only exist in a corporate form or capacity so long as such legislation continues. The doctrines taught within the Church have been altered from time to time by the sole and supreme will of the State; just as the fashion of the uniform to be worn by regiments in the army has been changed by the same authority. At one time the State directed its ecclesiastical officers to wear the livery, and administer the services, of Catholicism. In Edward the Sixth's time another word of command was given; and Episcopalian forms were to be observed. Mary restored the ancient order; Elizabeth brought back Episcopalianism. Under the Commonwealth the law directed Presbyterianism until Charles II. practically established "the Church of England," through which, at the present day, the State continues to exercise its ecclesiastical activity.

The Bishop of Manchester declares that "the continuity"

^{* &}quot;Disestablishment and Disendowment—What are they?" By E. A. Freeman, D.C.L., LL.D., pp. 31, 32.

of the Church was not interrupted "for a single moment." * He rebukes the people who "talk" as if the 4,000,000 of people inhabiting this country at the time of the Reformation were "equally divided into Protestants and Catholics, and the property of the Church was taken from the latter and given to the former." With all due deference, I submit that the supposed "continuity of the Church" is as mythical as the existence of Phlogiston, the spirit of fire. The one continuous element in the ecclesiastical history of England is the supreme authority of the State. Nothing else in the Church has been "continuous." Its doctrines and ceremonies have varied as Governments have arisen and fallen, but its dependence on the reigning political power of the day has remained. I do not maintain that the Government at the Reformation took property from one "body" and gave it to another, as it might confiscate the estates of one duke to bestow them on another; but that the Government instructed its ecclesiastical officers to conduct religious services belonging to a form of faith differing from that which had previously existed, and, when they refused, summarily dismissed them from their posts.

Historically, as legally, therefore, there is no body called the Church of England entitled of its own right to retain ecclesiastical endowments. It directly follows that what istermed vaguely "Church property," is not held on any tenure at all analogous to that on which the title to ordinary property depends. Church property is not private property in the sense in which an estate is private property. The Church authorities are trustees of the State, appointed for administrative duties, and have no right to claim what are emphatically trust funds, given into their charge by the nation, as their own. The holder of Church property enjoys its use, on

^{*} Loc. cit. ante.

condition of performing certain duties which he does not in any way select for himself, but which are determined for him by the State; and he can neither sell it, nor bequeath it, or in any way transfer it, according to his pleasure. The supporters of the Establishment have no right, on the pressure of one argument to declare that "their Church" holds private property, and on the pressure of another to maintain that it provides for a national recognition of religion.

The ecclesiastical endowments now used by the Established Church are not equivalent to those held by Dissenting bodies. because the Church has never existed as an independent religious organisation, in the sense in which an Independent, Baptist, or Weslevan Church exists, and therefore, of its own right, possesses no property whatever. Never having been a private institution, it can establish no claim to private property. Professor Newman raises the question whether an individual has a natural right to dictate a creed to future ages, if only he will give money for it, and personally I admit the adverse conclusion at which he arrives.* But this is an altogether different thing from the appropriation of national property to that ecclesiastical system which is called the Church of England. It is impossible for that system of legislation on ecclesiastical matters, termed the Church of England, to receive under the conditions of its establishment any gifts for itself as Nonconformist churches can receive them, for the simple reason that it has no existence apart from the nation, and must at all times, therefore, be prepared to receive the verdict of the nation with regard to the control of any property now devoted to its service, or the continuance of any official power now delegated to its ministry.

Neither is the relation of the Church to the State equiva-

^{* &}quot;On Religious Endowments," By Prof. F. W. Newman. Being a Lecture to the Manchester Reform Club. October, 1874.

lent to that of a public institution, like an hospital, which generous donors have privately endowed. An analogy might possibly be drawn if an hospital were officered by Government nominees, and regulated in its method of treating disease by Act of Parliament.

Endowments given by individuals cannot, I further contend, partake of the character of private property. Any gifts to a State-Church must be bestowed, and received, on the conditions under which the Church itself exists. individuals have endowed a church connected with the English ecclesiastical system, they have endowed an institution existing by the leave, and under the authority, of the State, and not an independent body capable of enjoying a fortune of its own. If a private individual erect a building, and present it to the authorities who, in submission to the Legislature, manage the affairs of the State-Church in England, he virtually presents it to the nation, and abrogates his private rights and claims. He cannot bargain that the services within it shall be Broad Church, or Evangelical, or Ritualistic. He can make no stipulation that if the nation should revert to Popery the edifice he has erected shall be devoted to Protestant purposes; and, by the same rule, he cannot make it a condition of his gift that if the State should abandon the attempt to exercise religious functions, such edifice shall be reserved for the special use of any one section of the nation alone.

My next position is, that no special claim upon Church property can be established against the nation at large by certain Christians personally attached to Episcopalian forms. On the 19th May, 1662, the assent of Charles II. was given to an Act "for the uniformity of public prayers, and administration of sacraments and other rights and ceremonies, and for establishing the form of making, ordaining, and consecrating

bishops, priests, and deacons in the Church of England." This Act rendered it imperative upon every clergyman to declare his unfeigned assent and consent to all and everything contained in and prescribed by the Book of Common Prayer; incapacitated every person from holding a benefice or administering the Lord's Supper, who had not previously received episcopal ordination, and prohibited every one from preaching or conducting public worship, unless he did it according to the rites of the Church of England. By this Act the property of the nation was virtually devoted to the service of those who believed in Episcopacy, and by Bills of pains and penalties their tenure was rendered secure. The right of the particular party now dominant in England to the enjoyment of Church property, rests upon what is now admitted to have been an act of persecution. Parliament summarily dismissed from religious offices all those who could not accept one set of forms and dogmas; but the claims of the nation, although long in abeyance, have not been destroyed by the vote of the section which chanced to obtain a temporary majority.

On the following grounds, therefore,-

1st. That what is termed the "Church of England" is the State exercising ecclesiastical functions, and that this Church does not constitute, either legally or historically, a corporate body, entitled, of its own right, to ecclesiastical endowments.

2nd. That the property now devoted to the sustenance of what is called the Church of England, is trust property held from the State, and not private property, like an estate appertaining to an individual, or an endowment given to a Dissenting Church, or a donation received by a special charitable institution.

3rd. That a large proportion of the sum now devoted to ecclesiastical uses has been obtained through the direct

action of the common law, and that special endowments bestowed by individual donors have been both given to and accepted by a State institution without any reserved conditions of private proprietorship.

4th. That those individual Christians who are Episcopalians have obtained their exclusive position as the result of direct acts of persecution, and can therefore establish no exclusive right to the property they administer-I claim the whole of the ecclesiastical endowments now administered by the State-Church as the property of the poeple of England, to be dealt with, according to their pleasure, by their representatives in Parliament assembled. The Bishop of Manchester * has himself admitted that "the property of the Church of England is national property, in the sense that it was originally given for national purposes; and that the nation, as represented in Parliament, has a right to see that it is properly distributed and usefully applied." So that, although all his contention regarding the origin and character of Church property be true, and all my contention be false. we meet at last upon one platform, and equally assert the supreme right of the nation.

Several questions are at once suggested by this general conclusion:—Do you propose, it will be asked, to give no 'compensation' to the Church? Individuals now employed in the service of religion, according to the forms appointed by the State, will undoubtedly have a right to most liberal treatment. No individual ought to be left worse off by any measure of Disestablishment. Justice requires not only that every individual minister should be compensated, but that such compensation should be regarded as his own property and be placed absolutely at his own disposal. The advowsons belong-

^{*} Loc. cit. ante

ing to individuals having been recognized as private property by the law, would, as a matter of course, have to be treated as private property. But, for the reasons advanced in this paper, I cannot admit that there will be any corporate body, called the Church of England, entitled to compensation after the claims of individuals have been fairly and amply satisfied. If, on the abandonment of State-control over religion, Protestant Episcopalians organize a Voluntary Church, no injury will be inflicted upon them if they are simply required to do what is done by all their fellow-citizens, support the Church in which they themselves desire to worship the God who made them.

With respect to parish churches, their very name indicates their proper appropriation. They belong to the parishes; let the parishes determine what to do with them. They might be let with a purchasing clause in the lease to some one religious body for a term of years; or simply let to a religious body; or (which I should deem preferable) two or three religious bodies might arrange to conduct services in them at different times of the day.

The point contended for, is, that if a church be sold for a religious use, the parish should receive its fair value; or if let to a worshipping body or bodies, such control should be retained by the parish as will enable it to resume its rights over the building, whenever it may be thought necessary; no one religious body obtaining, without purchase, a perpetual possession. The parish should receive the full price, or the fair rental, and devote the amount, not to defray the expenses of any system of worship, but to relieve the parochial burdens.

Cathedrals distinctly belong to the nation, and should be reserved by the nation for religious uses, such services being conducted within them as the nation may from time to time determine. Preachers in cathedrals ought not to be selected

from one sect. The most eminent men of all denominations in the country should in turn be invited to teach and preach to the people within them.

The method of disposing of ecclesiastical endowments does not fall within the scope of my subject. I have claimed them entirely and absolutely for the nation—to be dealt with by national authority for national purposes. It should be remembered that, the compensation of life interests being a gradual process, a large portion of the surplus funds will accumulate slowly. As they accrue, they might either pass into the imperial treasury or be dealt with locally. It is worth considertion whether they might not be administered by parishes, groups of parishes, and municipalities. A municipality might employ, for the public benefit, the ecclesiastical property within its boundaries. Where a municipality does not exist, the parish might receive Church lands and revenue. Should any parish be too small, or possess an undue proportion of wealth, groups of parishes might be arranged. While the questions affecting the disposal of the funds which may accrue from Disestablishment must be fairly and thoroughly debated, any decision upon them may stand over until we have won a public acknowledgment of the national right.

I have stated and defended (I trust with all the respect due to those who differ from me) the principles which, in my belief, should guide the settlement of this great question. In this country, in which the spirit of compromise has become the genius of legislation, no man can expect that abstract principles of justice will ever be carried to their logical consequences in an Act of Parliament. It is none the less necessary that those who would promote great reforms should understand what justice demands, both that their own hearts may be touched with that supreme enthusiasm which only springs from faith in the goodness of their cause, and that they may

not despair too soon of success, and surrender, ignominiously, at the moment when faithful resoluteness might secure honourable terms, the very citadel of their high contention.

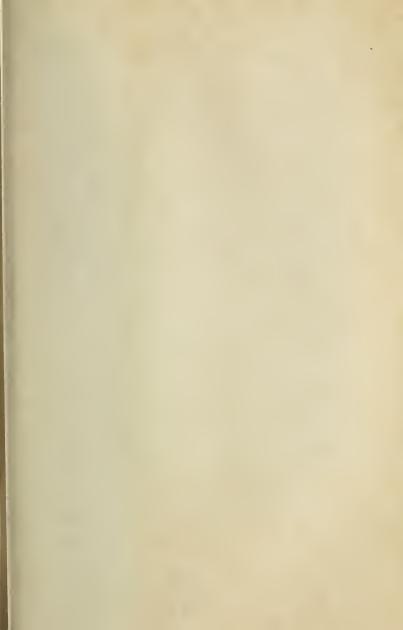
It will, of course, be open to the representatives of the nation to consider the former position of those who have been connected with the Episcopalian institutions, and deal both generously and bountifully with them.

A certain amount of property is the result of modern voluntaryism, and was intended by private donors, who are now living, for the use of a Church accepting Episcopal forms.

With respect to such property, while no claim of right can be admitted—while it is impossible to recognize property expressly given to an institution, both established and managed by national authority, as subject to the private disposal or control of individual donors—in the way of generous dealing, and for the purpose of procuring the settlement of a long controversy, it may not be advisable to press the claim of right to its fullest extent.

I am, however, solemnly convinced that it will be better to agitate for years than to run the risk of the passing of a scheme of Disestablishment which should, directly or indirectly, approach to a re-endowment of an ecclesiastical organization which would act independently of State-control.

We may be denounced as robbers, laying sacrilegious hands upon the Temple of the Lord. In sober truth we are the defenders of the people's rights against the assertors of sectarian privileges, and the advocates of the cause of the ignorant, the poor, and the needy, whose lives could be made so much brighter, purer, and nobler if the great resources of England could be won from the hands of ecclesiastics, and devoted to purposes conducive to the well-being of the nation at large.



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